Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 195

NORTHWESTERN ELECTRIC COMPANY AND AMERICAN POWER & LIGHT COMPANY, PETITIONERS,

vs.

FEDERAL POWER COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 23, 1943.

CERTIORARI GRANTED OCTOBER 11, 1943.

No. 10161

United States

Circuit Court of Appeals

For the Ninth Circuit.

NORTHWESTERN ELECTRIC COMPANY and AMERICAN POWER & LIGHT COMPANY,

Petitioners,

vs.

FEDERAL POWER COMMISSION,

Respondent.

Transcript of the Record

In Five Volumes

VOLUME IV

Pages 805 to 827

Upon Petition to Review an Order of the Federal Power Commission

ROTARY COLORPRINT 590 FOLSOM ST. SAN FRANCISCO

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, November 19, 1941.

Before: Garrecht, Haney and Healy,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered petition to review herein argued by Messrs. John A. Laing and A. J. G. Priest, counsel for petitioner, and by Mr. George Slaff, Principal Attorney, Federal Power Commission, counsel for respondent, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, February 13, 1942.

Before: Garrecht, Haney and Healy,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING OF DECREE

By direction of the Court, ordered that the typewritten opinion this day rendered by this court in

above cause be forthwith filed by the clerk, and that a decree be filed in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Petition to Review an Order of the Federal Power Commission.

OPINION

Before: Garrecht, Haney and Healy,
Circuit Judges.

Haney, Circuit Judge.

Review is sought of an order of the Federal Power Commission.

Petitioner was organized under the laws of Washington on January 7, 1911 by two San Francisco financiers who desired to acquire a water power site to develop electricity for a paper mill in which they were interested. The promoters advanced $175,000 to petitioner for the purpose of acquiring water power sites, which amount was repaid on May 13, 1912 with interest. Petitioner thereafter decided to enter the utility business in Portland and vicinity to utilize the power developed in excess of the paper mill's requirements.

On March 14, 1911, petitioner's Board of Trustees issued to the promoters 50,000 shares of the $100 par common stock, and on May 14, 1912, petitioner's Board of Trustees increased the capital

stock of petitioner from 50,000 shares of $100 par common to 100,000 shares of $100 par common, and issued the additional 50,000 shares to the promoters. This $10,000,000 of common stock was not recorded on petitioner's books until January 31, 1914, when it was entered in an account entitled "Land and Water Rights" and a corresponding credit to "Common Capital Stock".

In 1925, American Power & Light Company purchased all the common stock in petitioner at a cost of $5,095,946.48. In 1936 petitioner was authorized by the regulatory authorities of Oregon and Washington to reduce the par value of its common stock from $100 to $35. Petitioner based the reduction upon the then fair value of its assets.

From the commencement of regular operations through 1925, petitioner did not capitalize interest during construction on all its construction expenditures, except for the period from 1911 to July 1, 1914, and except for construction of one plant. Since 1925, petitioner has capitalized interest during construction on projects costing more than $1,000, and requiring more than 30 days to complete.

Respondent prescribed a Uniform System of Accounts for Public Utilities and Licensees and required the reclassification of the electric plant of public utilities, and adjusting entries necessary to reflect the reclassification as of January 1, 1937. Petitioner submitted a purported reclassification of its electric plant account. Respondent made an investigation of the reclassification and issued a re-

port[1] thereon under date of April 26, 1940. Respondent's letter of transmittal to petitioner contained a request for a plan of disposition of the $3,500,000 common stock item, and a request that petitioner adjust its reclassification to conform with the report.

The report recommended that an item in petitioner's reclassification, constituting a capitalization of interest charges for construction between July 1, 1911 and December 31, 1925, should be eliminated. It further recommended that the amount of $3,500,000 should be retained in account 107—Electric Plant Adjustments—pending the submission to the Commission of a plan for its disposition.

Petitioner did not comply with the requests made and on June 18, 1940 respondent ordered petitioner to show cause why it should not find and determine by order that adjusting entries be made to bring the books of account in conformity with the report made. Hearing was held thereafter, and briefs were filed.

On December 6, 1940, respondent issued its opinion and findings. With respect to the interest item, the Commission found that the omission of the interest capitalization prior to the proposed reclassification was a deliberate choice on behalf of the petitioner, which was the exercise of proper account-

[1] The report mentioned was actually a joint report of respondent and the Public Utilities Commissioner of Oregon, the latter also participating in the investigation.

ing discretion, was not an "error", was "reaccounting" rather than "reclassification", and that it would be improper for petitioner to include such item in its account now.

With respect to the common stock item, respondent found that the issue of the common stock was a "disguised gift" by the promoters to themselves; that "there is no reliable evidence in the record that any promoters' services of demonstrable value or any other consideration was received by the" petitioner for its common stock, and

> "The real cost of all the property of the Company at the time of the issuance of its Common Stock were represented by debt securities. This condition likewise prevailed on July 1, 1914, except for a small amount of Preferred Stock. Even today the Company's entire Common Stock is not represented by any assets received by the Company in exchange for it. No electric plant was received in exchange for the Common Stock; hence, no amount in respect thereof should remain in the electric plant accounts. The issuance of this stock was manipulation."

Regarding the disposition of the common stock item, respondent made the following statement:

> "Considering all relevant factors, we find that it is in the interest of consumers, investors and the public to direct the disposition of the $3,500,000 write-up by requiring the Company to

apply all net income above Preferred Stock dividend requirements to the disposition of the $3,500,000 in Account 107. This disposition, assuming adequate earnings, is the equivalent of obtaining ultimately from the holders of the common stock (the holding company) a consideration of $3,500,000 for the stock. Certainly dividends should not be paid on the Common Stock until it has the equivalent of a paid-in value."

The order of respondent, issued December 6, 1940, required petitioner to comply with such findings. On January 9, 1941, petitioner filed an application for rehearing. On January 21, 1941, respondent granted a rehearing with respect to the common stock item, but denied the application as to all other matters. On February 21, 1941, and prior to a decision or order of respondent on the rehearing, petitioner filed in this court its petition to review respondent's order of December 6, 1940.

The Federal Power Act[2] consists of three parts. The first part, in general, provides for the creation of the Federal Power Commission, the improvement of navigation and the development of water power. 16 USCA §§791-823. Part II of such act, in general, provides for the regulation of electric companies engaged in interstate commerce. 16

[2] For discussion as to the title of the act see Montana Power Co. v. Federal Power Commission, 9 Cir., 112 F(2d) 371, 373.

USCA §§824-824h. Part III of such act, in general, relates to licensees and public utilities and contains procedural and administrative provisions. 16 USCA §§825-825r.

Part I, §3, defines "net investment" in a project, the basis of which is "the actual legitimate original cost". 16 USCA §796(13); §14 of such part provides that the United States may purchase a project at the expiration of the license upon payment of such net investment, not exceeding the fair value of the property, and further empowers the Commission to determine the "net investment" of the licensee in the project. §20 of Part I makes provision for regulation of rates charged for power entering into interstate and foreign commerce, and stipulates that in any valuation of the property of any licensee "for purposes of rate making" no value will be claimed by the licensee or allowed by the Commission in excess of the value or values prescribed in §14. (16 USCA §813).

Section 201(a) of Part II of the act (16 USCA §824) provides as follows:

> "It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce is necessary in the public

> interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States."

Section 208(a) of such part provides that the Commission may investigate and ascertain the actual legitimate cost of the property of every public utility, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property. 16 USCA §824g.

Section 301(a) of Part III of the act (16 USCA §825(a)) requires every licensee and public utility to make, keep and preserve such records

> "* * * as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act * * * Provided, however, That nothing in this Act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged,

> or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof."

With these provisions in mind, we turn to the questions presented. It is difficult to tell what the exact contentions of petitioner are.

It is contended that states may regulate the accounting practices of utilities and therefore, by the express words of §201(a), federal regulation does not extend to the regulation of accounting practices. While it is true that §201(a) provides that "such Federal regulation" shall "extend only to those matters which are not subject to regulation by the States", the words "such Federal regulation" refer back to the kind of regulation previously referred to, i.e., to "matters relating to generation" of electricity, and to "that part of such business which consists of the transmission of electric energy in interstate commerce". As accounting of the sort involved here is not either of the things mentioned, §201(a) does not preclude installation of a system of accounts by respondent.

It is further contended that the system of accounts authorized by §301(a) of the act must be "necessary or appropriate for purposes of the administration" of the act, and that the system of

accounts prescribed by respondent is neither necessary nor appropriate. We will assume, without so deciding, that the system of accounts which respondent is authorized to prescribe, must be a system which respondent may lawfully determine to be necessary or appropriate for purposes of administration of the act. There is nothing in the act which authorizes us to determine what is necessary or appropriate for purposes of administration of the act. The duty to make such a determination is imposed by the statute on respondent. After such determination, the only question which may be presented to us is one of law. The question of law has been expressed in various words, such as: did the Commission abuse its discretion, or was the action of the Commission arbitrary or unreasonable, or was the action of the Commission based on whim, or is there any rational basis to support the view of the Commission? All these expressions lead to one conclusion, which is: could any reasonable man take the view announced by the Commission? If he could, then the action of the Commission must be sustained. If he could not, then the action of the Commission cannot be upheld. See: A.T. & T. Co. v. United States, 299 U.S. 232, 236-237. The mere fact that the system of accounts prescribed might appear to us to be unwise, burdensome or inferior to another system, is insufficient to show that a reasonable man could not take the view which the Commission took. Id. p. 236.

Petitioner also contends that Congress did not intend to grant to the Commission authority which could be exercised by the States with respect to accounting matters. The arguments in support of this contention need not be repeated, for the language itself discloses the Congressional intent. It authorizes the Commission to "prescribe a system of accounts to be kept by licensees and public utilities". The authority is unlimited, and restrained, if at all, only by the rule mentioned in the preceding paragraph. The mere fact that the Commission's authority over other things may be limited in the act, does not show that the authority over the subject in controversy is also limited. There is no good reason for reading into the language a limitation. We think that if Congress had intended such grant of authority to be limited, it would have been as specific in the limitation as it was in the grant.

Petitioner contends that even though the act is construed to give the Commission authority to prescribe an accounting system, the Commission may not issue regulations which oust the jurisdiction of the courts. We see no point to this contention. We know of no regulation which attempts any such action. Section 313(b) of the act specifically provides for review of orders of the Commission. If there is any regulation which attempts to limit that statute, it is not involved here.

The only other question before us regarding the general power of the Commission, is whether respondent, in prescribing the system of accounts here

involved, prescribed a system which no reasonable man would prescribe. Petitioner argues that original cost is less significant than other evidence of value, and that if original cost can be made the sole criterion of value for purposes of utility regulation, the investor will shun utility securities. Such arguments are among those which should be considered upon the initial decision of the question as to what system should be prescribed, but insofar as the decision of the question before us is concerned, our agreement with such arguments does not show that a reasonable man could not find another sound reason for the conclusion of the Commission. In other words, the question before us is not one which calls for the display of reasons or arguments supporting another view, but one which requires a demonstration, that the reason or arguments supporting the view of the Commission, were those which could not have been accepted by a reasonable man.

In this connection it is argued that rates must be based at a figure which will yield a fair return on the fair value of a utility's properties; that the courts have disapproved of the "original cost" value and have fixed the rule of "fair value" as the basis; and that therefore a system of accounts which requires petitioner to eliminate "fair value" from its accounts, is contrary to the decisions and deprives petitioner of its vested property rights without due process of law. The latter argument is unsound. Petitioner has as much property as it has ever had. The system of accounts takes nothing from peti-

tioner. Petitioner may keep such other accounts as it desires. The present regulation only requires a particular system of accounts to be kept, not that other systems shall not be kept.

Furthermore, original or actual cost of the property is a factor which must be considered in determining whether a particular rate yields a fair return. Los Angeles Gas Co. v. R. R. Comm'n, 289 U.S. 287, 306. While it is not the only factor, generally speaking, it is one of them. Whether the act in question requires rates to be fixed on values arrived at by the "original cost" method alone, or in conjunction with other methods, it is unnecessary to determine, for under any method "original cost" is a factor to be considered. Certainly there ought not to be any objection to the keeping of a system of accounts which will show correctly one of the factors to be considered in fixing rates—a matter within the jurisdiction of public bodies.

Turning now to the justification for respondent's view in prescribing this system, we find indications in the act, quoted above, that Congress attached great importance to the "original cost" theory. A pertinent one is the provision for purchase by the United States of a project. §14. In addition, the reasons for prescribing an "original cost" system are almost identical with those described in A. T. & T. Co. v. United States, supra, 238-239, referring to telephone companies. Consideration of these reasons lead, we think, to but one sound conclusion which is that a reasonable man could believe that

such reasons warranted the system of accounts involved here. Since we have reached that conclusion, the judicial function is exhausted.

With respect to the interest item required to be eliminated from petitioner's accounts, petitioner contends that the Commission's system specifically authorizes the inclusion of such items; that uniformity is flouted by elimination of the item; and that the contention that inclusion would improperly disturb the finality of past accounting is refuted by the Commission's action with respect to the common-stock item.

There is no contention that the interest item could not have been properly included in the accounts at the time when they were born. Respondent's view is that the system it prescribed contemplated reclassification of old accounts in order that those items which did not represent "original cost" could be eliminated or corrected, and that the system did not, does not, and should not contemplate the inclusion of items which had never appeared on the old accounts. The Commission, having power to prescribe a system, likewise has power to determine the extent of the system. In determining the extent of the system, the Commission reached the conclusion that "retroactive accounting for indefinite periods in the past" would lead to chaos in accounting rather than to a desired end of finality. We think a reasonable man could take that view, and therefore the order, with respect to that item must be sustained.

With respect to the common-stock item, a rehearing of the Commission's order was granted but not decided. Until decided there is no "order" to review here. Fed. Power Comm'n v. Edison Co., 304 U.S. 375, 383.

Affirmed.

[Endorsed]: Opinion: Filed Feb. 13, 1942. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9756

NORTHWESTERN ELECTRIC COMPANY,
Petitioner,

vs.

FEDERAL POWER COMMISSION,
Respondent.

JUDGMENT.

Upon Petition to Review an Order of the Federal Power Commission.

This cause came on to be heard on the transcript of the record from the Federal Power Commission, and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the Order of the said Federal Power Commission in this cause in the following words and figures:

United States of America
Federal Power Commission

Commissioners—Leland Olds, Chairman, Claude L. Draper, Basil Manly, John W. Scott and Clyde L. Seavey.

December 6, 1940

Docket No. IT-5642

In the Matter of

NORTHWESTERN ELECTRIC COMPANY

ORDER DIRECTING ACCOUNTING ENTRIES IN RECLASSIFICATION AND DISPOSITION OF AMOUNTS IN ACCOUNT 107

Upon consideration of the previous orders in this proceeding, the evidence adduced of record, the briefs and other documents filed, and having on this date made and entered its Opinion No. 56 with Findings, which we incorporate by reference as a part hereof;

The Commission orders that:

(1) Northwestern Electric Company enter on its books not later than December 31, 1940, and as of December 31, 1936, the following reclassification journal entry:

	Debit	Credit
100. Electric Plant		
100.1 Electric Plant in Service		
Intangible Plant		
302. Franchises and Consents	$ 839.71	
Hydraulic Production Plant		
320. Land and Land Rights	152,491.07	
321. Structures and Improvements	243,573.03	
322. Reservoirs, Dams and Waterways	1,278,934.92	
323. Water Wheels, Turbines and Generators	99,280.06	
324. Accessory Electric Equipment	106,051.64	
325. Miscellaneous Power Plant Equipment	9,676.23	
326. Roads, Railroads and Bridges	30,431.99	
Transmission Plant		
340. Land and Land Rights	159,710.99	
341. Clearing Land and Rights-of-way	9,358.78	
342. Structures and Improvements	21,411.84	
343. Station Equipment	457,160.11	
344. Towers and Fixtures	77,169.90	
345. Poles and Fixtures	362,935.97	
346. Overhead Conductors and Devices	361,324.10	
348. Underground Conductors and Devices	203,195.22	
Distribution Plant		
350. Land and Land Rights	64,008.36	
351. Structures and Improvements	92,768.14	
352. Station Equipment	1,173,748.74	
354. Poles, Towers and Fixtures	1,058,599.59	
355. Overhead Conductors and Devices	1,227,592.23	
356. Underground Conduit	781,990.40	
357. Underground Conductors and Devices	741,086.24	
358. Line Transformers	886,481.33	
359.1 Services—Overhead	420,786.20	
359.2 Services—Underground	364,472.56	
360. Meters	576,078.75	

		Debit	Credit
361.	Installations on Customers' Premises	8,744.62	
362.	Leased Property on Customers' Premises	1,043.09	
363.	Street Lighting and Signal Systems	165,645.58	
	General Plant		
370.3	Land and Land Rights—Stores	11,611.28	
371.2	Structures and Improvements —Transportation	5,514.71	
371.3	Structures and Improvements —Stores	15,535.00	
372.	Office Furniture and Equipment	13,595.50	
373.	Transportation Equipment	41,661.13	
374.	Stores Equipment	1,024.78	
375.	Shop Equipment	220.60	
376.	Laboratory Equipment	44,746.06	
377.	Tools and Work Equipment	12,600.71	
378.	Communication Equipment	16,473.44	
379.	Miscellaneous Equipment	459.36	
	Total	$11,300,033.96	
100.4	Electric Plant Held for Future Use	41,616.37	
107.	Electric Plant Adjustments	3,744,030.74	
108.	Other Utility Plant		
	Common Utility Plant		
	Intangible Plant		
301.	Organization	5,798.46	
302.	Franchises and Consents	432.43	
303.	Miscellaneous Intangible Plant	109,583.55	
	Steam Production Plant		
310.	Land and Land Rights	181,768.51	
311.	Structures and Improvements	868,387.08	
312.	Boiler Plant Equipment	1,269,838.27	
314.	Turbo-Generator Units	1,116,205.55	

		Debit	Credit
315.	Accessory Electric Equipment	263,929.23	
316.	Miscellaneous Power Plant Equipment	105,816.19	
	General Plant		
370.3	Land and Land Rights—Stores	71,339.11	
371.2	Structures and Improvements —Transportation	5,227.61	
371.3	Structures and Improvements —Stores	166,549.95	
371.7	Structures and Improvements —Miscellaneous	291.35	
372.	Office Furniture and Equipment	128,595.04	
373.	Transportation Equipment	73,921.93	
374.	Stores Equipment	7,835.14	
375.	Shop Equipment	5,871.87	
377.	Tools and Work Equipment	40,527.83	
379.	Miscellaneous Equipment	4,967.14	
	Total	$ 4,426,886.24	
	Steam Heating Plant in Service		
343.	Transmission Mains	154,893.09	
354.	Distribution Mains	774,776.85	
359.	Services	153,689.63	
360.	Meters	75,447.62	
361.	Installations on Customers' Premises	84,459.31	
	Total	$ 1,243,266.50	
	Steam Heating Plant Adjustments	20,048.38	
110.	Other Physical Property	253,506.57	
126.2	Accounts Receivable from Associated Interests	9.75	
100.6	Electric Plant in Process of Reclassification		$21,029,369.96
250.	Reserve for Depreciation of Electric Plant		28.55
		$21,029,398.51	$21,029,398.51

(2) Northwestern Electric Company make the following disposition of the amounts recorded in Account 107, Electric Plant Adjustments:

(a) For each year, commencing with the calendar year 1940, it shall credit Account 107, Electric Plant Adjustments and charge Account 414, Miscellaneous Debits to Surplus with a sum equal to its Net Income (Account 400, Credit Balance Transferred from Income Account) less its Preferred Stock Dividend appropriations for each such calendar year until the amount of $3,500,000 shall have been entirely extinguished.

(b) Transfer by journal entry the sum of $243,953.47, on or before December 31, 1940, from Account 107, Electric Plant Adjustments, to Account 151, Capital Stock Expense.

(c) Transfer by journal entry the sum of $77.27, on or before December 31, 1940, from Account 107, Electric Plant Adjustments, to Account 271, Earned Surplus.

(3) Northwestern Electric Company file with the Commission, on or before January 31, 1941, certified copies of the journal entries required by paragraphs (1), (2b), and (2c), and also file certified copies of the journal entry required by paragraph (2a) on or before April 1, 1941, and for each year thereafter, as required.

By the Commission.

(Sgd) LEON M. FUQUAY
Secretary

be, and it hereby is affirmed, except paragraph (2a) of said Order, with respect to which the Commission granted a rehearing by order entered January 21, 1941, and except that part of paragraph (3) of said Order of December 6, 1940, which provided for the filing by respondent of certified copies of the journal entries required by said paragraph (2a); and the said Northwestern Electric Company is hereby directed to comply with the order of the said Federal Power Commission of December 6, 1940 with the exceptions as stated above, and notify the said Federal Power Commission in writing on or before May 29, 1942 what steps the said Northwestern Electric Company has taken to comply herewith.

[Endorsed]: Filed Feb. 13, 1942. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, March 13, 1942.

Before: Garrecht, Haney and Healy,
Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition of Northwestern Electric Company, filed March 4, 1942, and

within time allowed therefor by rule of court, for a rehearing of above cause, and of the objections of the respondent thereto, filed March 11, 1942, and by direction of the Court, it is ordered that said petition be, and hereby is denied.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Mr. John A. Laing, counsel for the petitioner, and good cause therefor appearing, it is ordered that the issuance, under Rule 28, of the mandate of this Court in the above cause be, and hereby is stayed to and including April 18, 1942; and in the event the petition for a writ of certiorari to be made by the petitioner herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

FRANCIS A. GARRECHT
United States Circuit Judge

Dated: San Francisco, California, March 13, 1942.

[Endorsed]: Filed Mar. 13, 1942. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing volumes I and II, consisting of eight hundred and three (803) pages, numbered from and including 1 to and including 803, together with volume III, Book of Exhibits, and volume IV, proceedings had in said Court of Appeals, consisting of pages 805 to and including 826, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the petitioner, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California this 27 day of March, 1942.

(Seal) PAUL P. O'BRIEN,

Clerk.